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**REPORT OF THE PROCEEDINGS  
OF THE JUDICIAL CONFERENCE  
OF THE UNITED STATES**

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**SEPTEMBER 15, 1999  
WASHINGTON, D.C.**

9/15/99 2002-011754

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*SEPTEMBER 15, 1999*

*WASHINGTON, D.C.*

*JUDICIAL CONFERENCE OF THE UNITED STATES  
CHIEF JUSTICE WILLIAM H. REHNQUIST,  
PRESIDING  
LEONIDAS RALPH MECHAM, SECRETARY*

# REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 15, 1999

## Contents

Call of the Conference .....	39
Reports .....	42
Executive Committee .....	42
Resolutions .....	42
Bankruptcy Appellate Structure .....	44
Class Action Legislation .....	45
Court of Federal Claims Legislation .....	46
Miscellaneous Actions .....	47
Committee on the Administrative Office .....	49
Committee Activities .....	49
Committee on Automation and Technology .....	49
Committee Activities .....	49
Committee on the Administration of the Bankruptcy System .....	50
Bankruptcy Judge Recall Regulations .....	50
Places of Holding Court/Official Duty Stations .....	51
Committee on the Budget .....	51
Fiscal Year 2001 Budget Request .....	51
Budget Decentralization Guidelines .....	51
Committee on Codes of Conduct .....	52
Code of Conduct for United States Judges .....	52
Committee on Court Administration and Case Management .....	53
Alternative Dispute Resolution .....	53
Records Management .....	54
Digital Audio Court Recording .....	56
Civil Justice Reform Act Reporting Requirements .....	57
Committee on Criminal Law .....	58
DNA Collection and Analysis .....	58
Intensive Firearms Prosecution .....	59
Post-Sentence Reports .....	59
Background Investigations for Probation and Pretrial Services	
Office Employees .....	60
Oleoresin Capsicum Pepper Spray .....	60

Committee on Defender Services .....	61
Professional Liability Insurance .....	61
Defender Organization Funding Requests .....	62
Committee on Federal-State Jurisdiction .....	62
Committee Activities .....	62
Committee on Financial Disclosure .....	63
Release of Financial Disclosure Reports .....	63
Committee on Intercircuit Assignments .....	63
Committee Activities .....	63
Committee on International Judicial Relations .....	64
United States Agency for International Development .....	64
Judicial Observer Programs .....	64
Committee on the Judicial Branch .....	64
Thrift Savings Plan .....	64
Travel Regulations for United States Justices and Judges .....	65
Committee on Judicial Resources .....	66
Professional Liability Insurance .....	66
Circuit Executive's Office Staffing .....	67
Court Interpreter Positions .....	68
Committee on the Administration of the Magistrate Judges System .....	68
Magistrate Judge Recall Regulations .....	68
Changes in Magistrate Judge Positions .....	69
Accelerated Funding .....	73
Committee to Review Circuit Council Conduct and Disability Orders .....	73
Committee Activities .....	73
Committee on Rules of Practice and Procedure .....	73
Federal Rules of Civil Procedure .....	73
Federal Rules of Evidence .....	74
Federal Rules of Bankruptcy Procedure .....	75
Committee on Security and Facilities .....	75
Naming Federal Courthouses .....	75
Automated External Defibrillator Program .....	75
Funding .....	76

**REPORT OF THE PROCEEDINGS  
OF THE JUDICIAL CONFERENCE  
OF THE UNITED STATES**

**September 15, 1999**

The Judicial Conference of the United States convened in Washington, D.C., on September 15, 1999, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

**First Circuit:**

Chief Judge Juan R. Torruella  
Judge Joseph A. DiClerico, Jr.,  
District of New Hampshire

**Second Circuit:**

Chief Judge Ralph K. Winter, Jr.  
Chief Judge Charles P. Sifton,  
Eastern District of New York

**Third Circuit:**

Chief Judge Edward R. Becker  
Chief Judge Donald E. Ziegler,  
Western District of Pennsylvania

**Fourth Circuit:**

Chief Judge J. Harvie Wilkinson III  
Chief Judge Charles H. Haden II,  
Southern District of West Virginia

**Fifth Circuit:**

Chief Judge Carolyn Dineen King  
Judge Hayden W. Head, Jr.,  
Southern District of Texas

*Judicial Conference of the United States*

**Sixth Circuit:**

Chief Judge Boyce F. Martin, Jr.  
Judge Thomas A. Wiseman, Jr.,  
Middle District of Tennessee

**Seventh Circuit:**

Chief Judge Richard A. Posner  
Judge Robert L. Miller, Jr.,  
Northern District of Indiana

**Eighth Circuit:**

Chief Judge Roger L. Wollman  
Judge James M. Rosenbaum,  
District of Minnesota

**Ninth Circuit:**

Chief Judge Procter Hug, Jr.  
Judge Lloyd D. George,  
District of Nevada

**Tenth Circuit:**

Chief Judge Stephanie K. Seymour  
Judge Ralph G. Thompson,  
Western District of Oklahoma

**Eleventh Circuit:**

Chief Judge R. Lanier Anderson III  
Judge Wm. Terrell Hodges,  
Middle District of Florida

*September 15, 1999*

**District of Columbia Circuit:**

Judge Laurence H. Silberman<sup>1</sup>  
Chief Judge Norma H. Johnson,  
District of Columbia

**Federal Circuit:**

Chief Judge Haldane Robert Mayer

**Court of International Trade:**

Chief Judge Gregory W. Carman

Circuit Judges W. Eugene Davis, David R. Hansen, Dennis G. Jacobs, Paul V. Niemeyer, Jane R. Roth, Anthony J. Scirica, and Walter K. Stapleton, District Judges Robin J. Cauthron, John G. Heyburn II, D. Brock Hornby, Michael J. Melloy, Edward W. Nottingham, and Harvey E. Schlesinger, and Judge Richard W. Goldberg of the Court of International Trade attended the Conference session. Gregory B. Walters, Circuit Executive for the Ninth Circuit, was also present.

Senator Patrick Leahy spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno and Solicitor General Seth Waxman addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Fern Smith and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the

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<sup>1</sup> Designated by the Chief Justice to attend in lieu of Chief Judge Harry T. Edwards.

Conference, as did James Duff, Administrative Assistant to the Chief Justice, and judicial fellows Amie Clifford, Richard Mendales and Mark Miller.

## **REPORTS**

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Smith spoke to the Conference about Federal Judicial Center programs.

## **EXECUTIVE COMMITTEE**

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### **RESOLUTIONS**

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who complete their terms of service in 1999:

The Judicial Conference of the United States recognizes with appreciation, respect and admiration the following judicial officers:

**HONORABLE DAVID R. THOMPSON**  
Committee on the Administration of the Bankruptcy System

**HONORABLE GEORGE P. KAZEN**  
Committee on Criminal Law

**HONORABLE CYNTHIA H. HALL**  
Committee on International Judicial Relations

**HONORABLE JULIA SMITH GIBBONS**  
Committee on Judicial Resources

September 15, 1999

**HONORABLE FERN M. SMITH**  
Advisory Committee on the Rules of Evidence

**HONORABLE NORMAN H. STAHL**  
Committee on Security and Facilities

Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

\* \* \* \* \*

The Executive Committee approved, on behalf of the Conference, the following resolution recognizing Judge Wm. Terrell Hodges' outstanding service as Chair of the Executive Committee:

The Judicial Conference of the United States recognizes with deep appreciation, respect and admiration, the Honorable

**WM. TERRELL HODGES**

Chairman of the Executive Committee from October 1, 1996 to October 1, 1999, and member of this body for six years.

Judge Hodges came to the Judicial Conference in 1993 after election by his peers in the Eleventh Circuit and following several years of service on a variety of Conference Committees, including three years as Chair of the Advisory Committee on Criminal Rules. Recognized for his exceptional intellect, keen analytical ability, and statesman-like demeanor, Judge Hodges rapidly earned the respect of his colleagues and of Chief Justice Rehnquist who, in 1994, appointed him to the Conference's Executive Committee. In 1996,

the Chief Justice appointed Judge Hodges to serve as Chairman of the Executive Committee -- only the second district judge in the history of the Conference to have this important honor.

Judge Hodges has been a superb Executive Committee Chair and an outstanding leader, who never wavered from the high-quality professionalism that is his standard. He set the tone for each Committee meeting with his thorough preparation, receptiveness to views of other members, and insightful comments. Through his astute grasp of the issues, and quick analysis of concerns expressed during Committee discussions, he was consistently able to forge Executive Committee consensus.

Judge Hodges is a man of impeccable integrity, someone we are proud to have as our friend and colleague. We are most grateful for his numerous contributions to the federal judiciary and the administration of justice. While we will miss his wise counsel at Judicial Conference and Executive Committee sessions, we look forward to working with him in the future and to our continued friendships with him and his wife, Peggy, in the years to come.

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## **BANKRUPTCY APPELLATE STRUCTURE**

In September 1998, in response to a recommendation of the National Bankruptcy Review Commission, the Judicial Conference voted to support simplification of appellate review of dispositive orders of bankruptcy judges, but urged that no change in the bankruptcy appellate process be considered until the judiciary had an opportunity to study further the existing process and possible alternative structures and submit a report to Congress. Pending completion of the study, the Conference opposed the appeal as of right from dispositive orders of bankruptcy judges directly to the courts of appeals (JCUS-SEP 98, pp. 46-47). After considering a study conducted by the Federal Judicial Center and with the concurrence of the Court Administration and Case Management Committee, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference propose to Congress the following revised bankruptcy appellate structure:

September 15, 1999

Appeals from dispositive orders of bankruptcy judges should continue to be taken to the district court or to the bankruptcy appellate panel, if one has been established, with further appeal as of right to the court of appeals. Additionally, the dispositive orders of bankruptcy judges should be reviewable directly in the court of appeals if, upon certification from the district court or the bankruptcy appellate panel, or upon motion by all parties to the appeal, the court of appeals determines that (1) a substantial question of law or matter of public importance is presented and (2) an immediate appeal from the order to the court of appeals is in the interest of justice.

Because of the likelihood of early congressional action, the Executive Committee approved the recommendation on behalf of the Conference. Subsequently, in response to an inquiry from Senator Patrick Leahy (ranking minority member of the Senate Judiciary Committee), the Executive Committee agreed to endorse a variation of the above position that would delete the words "or upon motion by all parties to the appeal."

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## CLASS ACTION LEGISLATION

Pending legislation, S. 353 and H.R. 1875 (106<sup>th</sup> Congress), would expand federal jurisdiction over class actions by permitting the initial filing in or removal to federal court of almost all such actions now brought in the state courts. The Committee on Federal-State Jurisdiction recommended to the Executive Committee that the Judicial Conference oppose the legislation, noting concerns that the provisions would add substantially to the workload of the federal courts and are inconsistent with principles of federalism. The Executive Committee also considered the views of the Committee on Rules of Practice and Procedure, which believed that the Conference should defer taking a formal position opposing the legislation at this time, and instead, should encourage Congress to continue exploring with the judiciary less intrusive and burdensome approaches. The Executive Committee voted on behalf of the Conference to express its opposition to the class action provisions in the two bills in their present form. A letter for transmittal to Congress stating the Conference's position was approved by the Committee. *See also infra*, "Committee Activities," p. 62.

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## **COURT OF FEDERAL CLAIMS LEGISLATION**

Several provisions relating to the Court of Federal Claims were submitted to Congress for inclusion in the judiciary's federal courts improvement bill. The Executive Committee considered the proposed amendments and determined to (a) ask that a section authorizing service by Federal Claims Court judges on territorial courts not be pursued; (b) express no objection to a provision that makes the residence of a retired Federal Claims Court judge his or her "official duty station"; (c) support a provision dealing with Court of Federal Claims judicial conferences, so long as the conferences are held in Washington, D.C.; (d) pose no objection to a section that provides that the annuity paid to any retired Federal Claims Court judge after age 65 be treated the same for Federal Insurance Contributions Act (FICA) tax and social security coverage as the annuity paid to an Article III judge on senior status, so long as the exemption from FICA tax is provided only in the context of a judge's performing judicial service under 28 U.S.C. § 178(d) (*see* JCUS-MAR 92, p. 24); (e) support a provision that clarifies that Federal Claims Court judges are "officers" within the meaning of title 5 for purposes of federal employee insurance and annuity programs (*see* JCUS-MAR 92, p. 24); (f) oppose a section dealing with life insurance coverage of Claims Court judges under the Federal Employees' Group Life Insurance (FEGLI) program, in order to study whether to extend certain coverage (now available to Article III judges) to Claims Court judges as well as to bankruptcy, magistrate, and territorial judges; (g) oppose a provision that would exempt Federal Claims Court judges from the requirement that a Federal Employees Health Benefits Program enrollee must have enrolled in the program for at least five years prior to retirement in order to continue participation and study the impact this section would have on non-Article III judges (such an exemption is currently provided only to Article III judges who retire on senior status); and (h) pose no objection to a revised proposed amendment to 28 U.S.C. § 797 that would authorize the chief judge of the Court of Federal Claims to recall, in certain circumstances, a judge who had retired based on disability under 28 U.S.C. § 178(c).

September 15, 1999

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## MISCELLANEOUS ACTIONS

### The Executive Committee:

- Approved proposed interim financial plans for fiscal year 2000 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, based on appropriations levels midway between the House and Senate allowances, and authorized the Director of the Administrative Office to make technical and other adjustments as deemed necessary.
- Opposed strongly the imposition of any assessment of costs related to the storage of case files by the National Archives and Records Administration and authorized the Director of the Administrative Office to seek administrative relief or, failing that, legislation exempting the federal courts from any assessment of costs related to case files storage.
- Opposed a proposed \$25 increase in chapter 7 and 13 bankruptcy filing fees to provide additional funds for the Department of Justice's United States trustee program.
- Endorsed a Court Administration and Case Management Committee-proposed amendment to 28 U.S.C. § 112(c) to add Central Islip, New York as a place of holding court (*see also infra*, "Places of Holding Court/Official Duty Stations," p. 51) and an amendment to 28 U.S.C. § 124(c) to redistribute the counties among the divisions of the Eastern District of Texas.
- On recommendation of the Security and Facilities Committee, opposed as unnecessary provisions in S. 599 (106<sup>th</sup> Congress) (and any other similar legislation) that assign to the Director of the Administrative Office the duties of issuing regulations for entities operating child care centers in judicial facilities and enforcing compliance with them.
- Agreed to defer seeking legislation approved in 1995 by the Judicial Conference to create a Judicial Conference Foundation (JCUS-MAR 95, p. 6) until after January 6, 2001.

*Judicial Conference of the United States*

- In light of the Judicial Conference's strong opposition to cameras in courtrooms, determined to oppose the judiciary's federal courts improvement bill if it includes a provision authorizing presiding judges of district and appellate courts to permit media coverage of court proceedings.
- Agreed to advise the Defender Services Committee to defer seeking enactment of legislation authorizing reimbursement or indemnification of Criminal Justice Act (CJA) panel attorneys for malpractice and related actions arising from their CJA services.
- Approved, on recommendation of the Defender Services Committee, payment of \$75 per hour to CJA attorneys in a highly complicated case in the Southern District of Florida.
- Supported, at the behest of the Security and Facilities Committee, the Federal Judiciary Protection Act of 1999 (S. 113, 106<sup>th</sup> Congress), which would, among other things, increase criminal penalties for assaulting or threatening federal judges, their family members, and other public servants.
- Approved revisions to the jurisdictional statement of the Economy Subcommittee of the Budget Committee.
- Declined to approve a request to allow second law clerks, authorized to bankruptcy courts with pending judgeship requests, to be hired in the previous fiscal year.
- Approved an interim delegation of authority to the Financial Disclosure Committee to allow it to act for the Conference, through a subcommittee, in reviewing requests for redaction of harmful information from financial disclosure reports, pending approval by the Judicial Conference of regulations implementing the "Identity Theft and Assumption Deterrence Act of 1998" (Public Law No. 105-318). *See infra*, "Release of Financial Disclosure Reports," p. 63.
- Authorized the release, after the Conference has acted, of the summaries prepared for the Judicial Resources Committee by the Administrative Office in response to requests for additional Article III judgeships.

September 15, 1999

- On recommendation of the Bankruptcy Committee and the Court Administration and Case Management Committee, opposed a provision in S. 625, 106<sup>th</sup> Congress, that would require copies of federal tax returns of individual chapter 7 and 13 debtors to be filed with and maintained by the courts and noted that responsibility for collection and maintenance of debtors' tax returns would more appropriately be assigned to the United States trustees.

## **COMMITTEE ON THE ADMINISTRATIVE OFFICE**

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### **COMMITTEE ACTIVITIES**

The Committee on the Administrative Office was briefed on the Administrative Office's progress in developing a long-term care insurance program and a flexible benefits plan for judicial officers and employees. It discussed ongoing and planned comprehensive assessments of a number of judiciary programs, including space and facilities, probation and pretrial services, court security, and information technology. The Committee received an update on the financial management improvement activities underway in the Administrative Office and discussed the status of the judiciary's budget and the potential for future funding difficulty. It also considered the AO's long-range planning efforts and discussed how the Committee may begin to identify strategic issues affecting the Administrative Office and the judiciary. The Committee praised the Administrative Office for its efforts in resolving the crisis created for federal judges when the Office of Personnel Management proposed a significant increase in the Federal Employees' Group Life Insurance Option B premium rates for individuals aged 65 and older.

## **COMMITTEE ON AUTOMATION AND TECHNOLOGY**

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### **COMMITTEE ACTIVITIES**

The Committee on Automation and Technology considered issues related to establishing publically accessible electronic repositories of opinions and received updates on several major information technology initiatives, including the case management/electronic case files project, the courtroom technology initiative, the

virtual law library project, and the administrative stewardship projects (Human Resources Management Information System (HRMIS), CJA Panel Attorney Payment System, Financial and Accounting System for Tomorrow (FAS<sub>T</sub>), Jury Management System (JMS), and Integrated Library System (ILS)). It also reviewed the status of year 2000 compliance within the judiciary.

## **COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM**

### **BANKRUPTCY JUDGE RECALL REGULATIONS**

On recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference approved amendments to the Regulations of the Judicial Conference of the United States Governing the Ad Hoc Recall of Retired Bankruptcy Judges and the Regulations of the Judicial Conference of the United States Governing the Extended Recall Service of Retired Bankruptcy Judges to clarify the regulations, improve their flexibility, and eliminate unnecessary provisions. The amendments to the extended service recall regulations (a) clarify that it is the judicial council of the circuit in which a retired bankruptcy judge will serve that is required to certify that the judge will perform substantial service; and (b) modify the regulations, which had provided for a fixed term of three years, by permitting variable periods of extended service for recalled bankruptcy judges ranging from more than a year to three years.

The amendments to both the *ad hoc* and extended service recall regulations clarify that any bankruptcy judge who retires under the Judicial Retirement System (28 U.S.C. § 377) and who thereafter practices law is not eligible for recall and (as provided in 28 U.S.C. § 155(b)) that a retired bankruptcy judge may be directly recalled to serve as a bankruptcy judge by *any* circuit (not just the circuit in which the judge formerly served). These amendments also eliminate the largely *pro forma* requirement for Bankruptcy Committee approval of a request for the intercourt assignment of a bankruptcy judge on recall service. *See also infra*, "Magistrate Judge Recall Regulations," pp. 68-69.

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## **PLACES OF HOLDING COURT/OFFICIAL DUTY STATIONS**

Pursuant to 28 U.S.C. § 152(b)(1), the Judicial Conference is responsible for determining the official duty stations of bankruptcy judges and their places of holding court. On recommendation of the Committee, after consultation by the Director of the Administrative Office with the respective judicial councils, the Conference agreed to—

- a. approve the designation of Central Islip as the official duty station for the two bankruptcy judges currently stationed in Westbury and the bankruptcy judge stationed in Hauppauge and delete the latter two locations as official duty stations in the Eastern District of New York (to be effective on the date the bankruptcy court moves to a new courthouse in Central Islip); and
- b. approve the designation of Sheboygan, Wisconsin, as an additional place of holding bankruptcy court and delete the designation of Manitowoc as a place of holding bankruptcy court in the Eastern District of Wisconsin.

## **COMMITTEE ON THE BUDGET**

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### **FISCAL YEAR 2001 BUDGET REQUEST**

In light of the congressional budget environment, the Budget Committee recommended a fiscal year 2001 budget request that is lower than the funding levels proposed by the program committees. The Judicial Conference approved the request, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Director of the Administrative Office considers necessary and appropriate.

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### **BUDGET DECENTRALIZATION GUIDELINES**

In September 1995, the budget decentralization guidelines were amended to allow circuit judicial councils to reprogram monies between temporary emergency funds (TEF), which are intended for employment of short-term temporary secretaries and law clerks, and tenant alteration funds (JCUS-SEP 95,

p. 73). There is no express provision in the guidelines prohibiting judicial councils from using this authority to reprogram TEF funds from judicial council budgets to other court units, where they can be used not only for tenant alterations, but also for other purposes. To ensure that these funds are used for their intended purpose, on recommendation of the Budget Committee, the Judicial Conference agreed to modify the budget decentralization guidelines expressly to prohibit reprogramming for any other purpose of temporary emergency and tenant alteration funds allotted to the circuit councils.

## COMMITTEE ON CODES OF CONDUCT

### CODE OF CONDUCT FOR UNITED STATES JUDGES

The Code of Conduct for United States Judges was amended in September 1992 to incorporate gender-neutral phrasing. In the course of making those changes, Canon 3C(1)(c) was altered in a way that appeared to require judges to recuse themselves due to the fiduciary holdings of a spouse or minor resident child, absent any other beneficial or legal interest that might independently necessitate the judges' recusal. The Committee on Codes of Conduct determined that the alteration was unintentional and inconsistent with 28 U.S.C. § 455(b)(4) and prevailing authority. The Committee recommended, and the Judicial Conference approved, the following revision to Canon 3C(1)(c), which returns the canon to its pre-1992 phrasing (with the exception of gender neutral language that will be retained) and conforms the canon more closely to the corresponding statutory provision. (New material is in bold, deleted material is struck out.)

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(c) the judge knows that **the judge**, individually or as a fiduciary, ~~the judge~~ or the judge's spouse or minor child residing in the household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding. . . .

## COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

### ALTERNATIVE DISPUTE RESOLUTION

The Alternative Dispute Resolution Act of 1998 (Public Law No. 105-315), which expanded the role of alternative dispute resolution (ADR) in the federal district courts, requires district courts to establish, subject to regulations approved by the Judicial Conference, the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered under Chapter 44 of title 28 of the United States Code (28 U.S.C. § 658(a)). On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved for inclusion in the *Guide to Judiciary Policies and Procedures* the following regulation regarding the compensation of alternative dispute resolution neutrals (including arbitrators):

All district courts must establish a local rule or policy regarding the compensation, if any, of neutrals for services rendered under Chapter 44 of title 28, United States Code, §§ 651-658. Discretion remains with the court as to whether that rule or policy should provide that neutrals serve *pro bono* or for a fee. As long as funding is not provided pursuant to the Act, the Judicial Conference does not encourage courts to institute rules or policies providing for court-funded, non-staff alternative dispute resolution neutrals.

In addition to the regulation, the Committee recommended, and the Conference approved, the following two non-mandatory principles and accompanying commentary, to be published in the *Guide*, that are intended to assist courts in developing local compensation procedures:

- *Where an ADR program provides for the neutral to receive compensation for services, the court should make explicit the rate of and limitations upon compensation.*

Commentary: Methods of compensation for ADR neutrals vary widely from court to court. Some courts use a panel of neutrals who serve completely *pro bono*. Other courts use a modified program, where a certain number of hours are provided free of

charge, with a fixed hourly rate thereafter to be paid by the parties, while still others have a fixed per-case payment schedule. Other programs have left the matter of compensation to the participants themselves, for negotiation with the neutral. Whatever funding mechanism is decided upon, the court's rule should minimize undue burden and expense for parties electing to use ADR.

- *When an ADR program provides for neutrals to receive compensation, the court should require both the neutrals and the parties to disclose all fee and expense requirements and limitations in the ADR process. A participant who is unable to afford the cost of ADR should be excused from paying.*

Commentary: Where courts permit neutrals to charge a fee to ADR participants, fee disputes can be prevented through disclosure of the fee arrangements. If the court intends to require a certain level of *pro bono* service in order to participate as a neutral in a court-annexed ADR program, the level of the *pro bono* commitment should be explicitly defined.

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## RECORDS MANAGEMENT

The Committee on Court Administration and Case Management considered and made recommendations on two issues related to record-keeping policies and practices of the federal courts, both stemming from a 1992 evaluation and report by the National Archives and Records Administration (NARA).

Storage and Retention of Sealed Court Records. Prior to 1995, the *Guide to Judiciary Policies and Procedures* prohibited sealed records from being retired to NARA federal records centers (FRCs) until such time as the seal was vacated. However, the 1992 NARA evaluation found that seals were often not vacated in a timely fashion, which resulted in a buildup of files in court space. In 1995, NARA partially addressed this problem by permitting temporary sealed records with an established date for vacating the seal to be stored at the FRCs. Similar regulations were subsequently included in the *Guide*. At this session, the Judicial Conference slightly modified, and then adopted, the following non-mandatory guidelines recommended by the Committee, to provide courts with further guidance on management of sealed records:

September 15, 1999

- a. Courts should consider establishing a practice for judges, when sealing records, to specify a date when a seal may be vacated, or to state that a record should be sealed permanently.
- b. Courts should be encouraged to review and consider unsealing older bodies of sealed material, particularly in cases sealed by judges no longer on the bench, and set a presumptive time-frame after a record has been sealed when it may be unsealed, with the burden on the litigants to establish why the seal should be maintained.
- c. Courts should be encouraged to review their sealed records and transfer to the National Archives and Records Administration's federal records centers any that belong to temporary case files.<sup>2</sup>

To assist courts in the process of transferring sealed records to the FRCs, the Conference adopted a Committee recommendation to modify the guidelines for disposal of sealed records found in Volume XIII, Chapter XVII, Part A of the *Guide* to include the following:

- a. Sealed records are not to be retired in the same accessions (shipments of documents) as unrestricted case files;
- b. NARA Standard Form 135, *Accessions of Sealed Records*, should clearly indicate that the records are sealed and include the date when seals may be vacated; and
- c. Sealed records that relate to permanent case files are not to be retired in the same accessions as temporary records.

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<sup>2</sup> "Temporary" case files generally refer to cases (after 1969) that were terminated *prior to trial*. "Permanent" case files generally relate to cases that were terminated *during or after trial* or that have been determined by NARA or the court to have *historical value*. See *Guide to Judiciary Policies and Procedures*, Vol. XIII, Chap. XVII, Part A, p. 19 *et seq.*

Court Records Designated "Disposal Not Authorized." In September 1982, the Judicial Conference approved and incorporated into the *Guide to Judiciary Policies and Procedures* disposition schedules for court records that had been developed jointly by the Administrative Office and NARA (JCUS-SEP 82, pp. 118-119). There were, however, a number of categories of records that the judiciary considered to have permanent historical value, but which NARA appraised as lacking archival value and therefore considered temporary. The designation "disposal not authorized" was created by the Administrative Office to resolve temporarily the dispute between NARA and the judiciary. NARA appraisers and the Administrative Office have since reached agreement on a disposition schedule for these records. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to adopt the following records retention and disposition schedules for cases currently designated "disposal not authorized" and, pending official approval from NARA, to direct Administrative Office staff to include the schedules in Volume XIII, Chapter XVII, Part A of the *Guide to Judiciary Policies and Procedures*:

- a. Attorney Disbarment Proceedings – *Permanent* – Transfer to FRCs after five years. Transfer to NARA's permanent collection when 25 years old.
- b. Attorney Admission Records – *Permanent* – Transfer to FRCs after five years. Transfer to NARA's permanent collection when 25 years old.
- c. Files on Disciplinary Actions Against Attorneys – Transfer to FRCs after five years. Destroy when 50 years old.
- d. Formal Actions and Minutes of the Circuit Judicial Councils – *Permanent* – Transfer to FRCs after five years. Transfer to NARA's permanent collection when 25 years old.
- e. Appellate Judicial Assignments and Designations – Transfer to FRCs when no longer needed for reference. Destroy when 50 years old.

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## **DIGITAL AUDIO COURT RECORDING**

In September 1997, the Judicial Conference authorized a one-year study of the use of digital audio court recording in court proceedings to assist in the determination of whether it should be added as an approved method of taking the

September 15, 1999

record under 28 U.S.C. § 753(b) (JCUS-SEP 97, p. 63). Digital audio recording is a computer-based system with features similar to audio recording systems, except that the recorded proceedings are stored and retrieved through the use of a computer requiring specialized hardware and software. Based on the study's findings that digital audio recording technology can provide a reliable, accurate record of court proceedings and the basis for accurate, timely transcript delivery, the Committee on Court Administration and Case Management recommended and the Judicial Conference approved digital audio recording technology as a method of taking the official record in federal court, to be implemented upon the development of guidelines by the Director of the Administrative Office. The guidelines should include technical and functional system requirements and a self-assessment tool for courts to use when deciding whether to purchase digital audio recording systems. Additional funds over the cost of analog systems will not be provided.

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## CIVIL JUSTICE REFORM ACT REPORTING REQUIREMENTS

Pending Date for Motions. The Civil Justice Reform Act of 1990 (CJRA) (Public Law No. 101-650) requires, *inter alia*, that the Director of the Administrative Office prepare semi-annual reports showing, by judicial officer, motions pending for more than six months. Prior to this session, the standard provided that the pending date for a motion (the date from which the six-month clock begins to run) is 30 days after the date of filing (JCUS-SEP 91, pp. 45-46). The Committee on Court Administration and Case Management was asked to consider changing the definition of pending to "when the motion is fully submitted" in light of the practice of some courts to require the movant to hold all motion papers and submit them to the court only after all the responses and replies from all parties are complete. The Committee recommended that the existing definition of pending be retained, but the language be expanded to address the procedures of those courts that have adopted a "holding" rule. The Conference, after discussion, agreed to amend the instructions for the CJRA report on civil motions pending over six months (as provided in the *Guide to Judiciary Policies and Procedures*) to state that for each district and magistrate judge, the pending date for a motion to be reported is 30 days after the motion is filed or, if the motion papers are not filed until the motion is fully briefed, then the date the motion is first served. If no decision on the motion has been entered on the docket six months after the pending

date, the motion should be reported as pending before the district or magistrate judge. The Conference further agreed to request that each circuit council review local rules that include holding procedures for the filing of motions to ensure that such rules or practices are consistent with Rule 5(d) of the Federal Rules of Civil Procedure.

Social Security Appeals. In September 1998, the Judicial Conference required that social security appeals be included in CJRA statistical reports in the same way as motions in civil cases, but with a pending date from which the six-month clock begins to run set at 60 days after the filing of the transcript in the case (JCUS-SEP 98, p. 63). Noting that often responses in social security appeals are not filed within 60 days after the filing of the transcript and appeals are not ready for decision in that time, the Committee on Court Administration and Case Management, with the concurrence of the Committee on the Administration of the Magistrate Judges System, recommended that the Judicial Conference amend the pending date in social security appeals from 60 to 120 days after the filing of the transcript. The Conference adopted the Committee's recommendation.

## **COMMITTEE ON CRIMINAL LAW**

### **DNA COLLECTION AND ANALYSIS**

The Federal Bureau of Investigation (FBI) is authorized to establish and maintain an index of deoxyribonucleic acid (DNA) identification records, collected by or on behalf of criminal justice agencies, to serve as a national storage medium for such records (42 U.S.C. § 14132; 28 U.S.C. § 531 note). However, individuals convicted in federal and military courts are not currently required by statute to provide DNA samples for analysis and inclusion in the FBI's national DNA database. The proposed "Violent Offender DNA Identification Act of 1999" (S. 903, 106<sup>th</sup> Congress) would require certain federal convicted offenders to submit to DNA collection and analysis for entry into the database, and addresses DNA sample analysis, quality assurance standards, testing methods, and regulations governing purpose and confidentiality. The responsibility for collecting samples from prisoners would reside with the Federal Bureau of Prisons, but probation officers would be responsible for coordinating testing for those under supervision. On recommendation of the Committee on Criminal Law, the Judicial Conference agreed to take no position on the proposed legislation so long as the judiciary is fully funded to implement the required provisions.

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## **INTENSIVE FIREARMS PROSECUTION**

Intensive firearms prosecution programs are designed to move firearms prosecutions from state to federal court. In these programs, local, state, and federal law enforcement officials cooperate to prosecute in federal court virtually all crimes committed with firearms. Legislation has been introduced in the 106<sup>th</sup> Congress (e.g., S. 254, the "Criminal Use of Firearms by Felons (CUFF) Act") that would provide for the expansion of these prosecution programs nationwide. The Judicial Conference adopted the recommendation of the Committee on Criminal Law that it take no position on proposed legislation to expand intensive firearms prosecution programs other than to recommend that any such legislation, if enacted, provide for a proportionate increase in judicial resources to the affected federal courts.

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## **POST-SENTENCE REPORTS**

Post-sentence reports are prepared by probation officers when presentence investigation reports are waived by the court and are used by the Federal Bureau of Prisons (BOP) for classification and designation procedures for defendants sentenced to incarceration and by probation officers in providing community supervision. The Committee on Criminal Law, reviewing post-sentence report procedures with a view toward reducing any unnecessary expenditures of judicial resources, concluded that BOP's needs can be met with a report that is streamlined to include only critical elements necessary to assist in classification and screening. Moreover, in lieu of a post-sentence report, probation officers can rely on the investigative information already contained in the offender's supervision file. On recommendation of the Committee, the Judicial Conference approved the following changes to the current practice:

- a. Rename the post-sentence report prepared by probation officers to the "Supplemental Informational Report to the Federal Bureau of Prisons";
- b. Revise the content of the report to include only specific relevant information necessary to assist the BOP;

- c. Reduce the frequency of the report's preparation by requiring the preparation of the report only when the presentence report has been waived by the court and when inmates have more than nine months imprisonment remaining to be served on their sentence; and
- d. Ask that an ongoing work measurement study be expanded to include the weighting of the work associated with the new supplemental informational report, taking into account the impact of gathering investigative information for the supervision file.

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#### **BACKGROUND INVESTIGATIONS FOR PROBATION AND PRETRIAL SERVICES OFFICE EMPLOYEES**

Under existing policy, the judiciary authorizes initial FBI single-scope background investigations for probation and pretrial services officers and conducts limited record checks for non-officer personnel in sensitive positions. Noting concerns about security and public safety, as well as requirements by other law enforcement agencies that probation and pretrial services staff have updated background investigations before access is granted to information in certain law enforcement databases, the Committee recommended changes to the Administrative Office background investigation policy with respect to probation and pretrial services officers and assistants. The Judicial Conference approved the recommended changes, adopting a policy that (a) in addition to the current initial single-scope background investigations for probation and pretrial services officers, the Director of the Administrative Office should arrange updated single-scope background investigations for all probation and pretrial services officers every five years, unless the Director determines that there are classes of employees or situations in which updated background investigations are not practical; and (b) the Director of the Administrative Office should arrange initial and updated single-scope background investigations for all probation and pretrial services officer assistants.

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#### **OLEORESIN CAPSICUM PEPPER SPRAY**

In March 1996, the Judicial Conference adopted a policy authorizing probation and pretrial services officers to purchase, carry, and use for law enforcement purposes Cap-Stun, a specific brand of oleoresin capsicum (OC)

pepper spray (a non-lethal spray used in self-defense) (JCUS-MAR 96, p. 18). At the time, Cap-Stun was the only product tested and approved by a national law enforcement agency. There has since been a proliferation of and continuing improvement in OC products. On recommendation of the Committee on Criminal Law, the Judicial Conference agreed to clarify its March 1996 policy on Cap-Stun by authorizing the Director of the Administrative Office to develop and approve minimum product safety and effectiveness standards for OC use, and to allow individual offices to use any OC products that meet those standards and local needs.

## COMMITTEE ON DEFENDER SERVICES

### PROFESSIONAL LIABILITY INSURANCE

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Public Law No. 105-277) authorized the judiciary to provide reimbursement for a portion of the cost of professional liability insurance to certain groups within the judiciary, effective October 1, 1998. The maximum reimbursement allowed is one-half the cost of the policy. The Committee on Defender Services considered application of this benefit to federal public defender organization (FPDO) employees.<sup>3</sup> Under the statute, FPDO employees would be eligible for reimbursement from their respective organizations' existing budgets only if they are "supervisors" and/or "managers" authorized by the Judicial Conference to receive the benefit. In accordance with the Committee's recommendations, the Conference designated the federal public defender position as a "manager" and/or "supervisor" position eligible to participate in the program and authorized individual federal public defenders to make the determination, consistent with Judicial Conference guidelines, as to whether other positions in the defender's organization constitute "manager" or "supervisor" positions. The Conference adopted the following guidelines, recommended by the Committee, to be applied by federal public defenders in determining eligibility for the program<sup>4</sup>:

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<sup>3</sup> The Committee on Judicial Resources considered application of this statute to other judiciary employees. *See infra*, "Professional Liability Insurance," pp. 66-67.

<sup>4</sup> Subsequent to the Conference session, Congress enacted Public Law No. 106-58, which *requires* reimbursement for a portion of the cost of professional liability insurance to all interested, eligible employees. The Judicial Conference guidelines will need to be revised to reflect the new requirement.

1. Participation of an FPDO in the program is at the discretion of the federal public defender. No additional funds will be provided to an FPDO's budget for this purpose.
2. The program is limited to "management officials" and "supervisors" within the FPDOs, as those terms are defined in 5 U.S.C. § 7103(a).
3. Generally, a person occupying an attorney position is not eligible for the program unless he/she serves in a supervisory capacity.
4. The program must be administered fairly within an individual FPDO, such that all qualified employees with the same or similar job descriptions must be eligible to participate. Eligibility determinations should be based upon examination of particular positions and their duties rather than the individuals occupying those positions.
5. A federal public defender's plan for implementing this program must be set out in writing and announced to employees before implementation.

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## **DEFENDER ORGANIZATION FUNDING REQUESTS**

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved \$151,300 to establish a new federal public defender organization and a new community defender organization. It also approved increases totaling \$467,800 for the fiscal year 1999 budgets of one FPDO and of the Federal Defender Training Group.

## **COMMITTEE ON FEDERAL-STATE JURISDICTION**

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### **COMMITTEE ACTIVITIES**

The Committee on Federal-State Jurisdiction recommended that the Judicial Conference oppose S. 353 and H.R. 1875 (106<sup>th</sup> Congress), which would expand federal court jurisdiction over class action suits. On behalf of the Judicial Conference, the Executive Committee voted to oppose the class action provisions in these bills, in their present form (*see supra*, "Class Action Legislation," p. 45).

## COMMITTEE ON FINANCIAL DISCLOSURE

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### RELEASE OF FINANCIAL DISCLOSURE REPORTS

Section 105 of the Ethics in Government Act of 1978 (5 U.S.C. app. 4 § 105), as amended by section 7 of the "Identity Theft and Assumption Deterrence Act of 1998" (Public Law No. 105-318)<sup>5</sup>, authorizes the Judicial Conference to redact information in a financial disclosure report when the Conference, in consultation with the United States Marshals Service, decides that revealing personal and sensitive information could endanger the individual filer. The Conference, in consultation with the Department of Justice, is required to issue regulations setting forth the circumstances under which redaction is appropriate and the procedures for redaction. In recommending regulations, the Committee on Financial Disclosure considered the views of the Department of Justice and also of the Security and Facilities Committee, which had some concerns regarding the failure of the proposed regulations to include specific Marshals Service procedures. After discussion, the Judicial Conference approved the recommendation of the Committee on Financial Disclosure that it adopt the regulations proposed by that Committee implementing § 105 of the Ethics in Government Act of 1978, as amended, governing the release of financial disclosure reports to the public. *See also supra*, "Miscellaneous Actions," p. 48.

## COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

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### COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 1999, to June 30, 1999, a total of 59 intercircuit assignments, undertaken by 43 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance in identifying judges willing to take assignments.

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<sup>5</sup> This amendment will expire on December 31, 2001.

## **COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS**

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### **UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT**

Under an interagency agreement between the Judicial Conference and the United States Agency for International Development's (USAID) Center for Democracy and Governance ("Democracy Center"), USAID has provided \$345,915 to the judiciary through the Federal Judicial Center Foundation for use in developing and administering international rule-of-law programs. Although a second grant of \$500,000, accepted by the Judicial Conference in September 1997 (JCUS-SEP 97, pp. 72-73), never materialized, the Democracy Center is interested in continuing to fund future programs involving the federal judiciary, particularly short-term strategic interventions and assessments involving foreign judiciaries. The Judicial Conference approved a Committee recommendation that it endorse in principle the USAID's use of a contract-based mechanism rather than a new interagency agreement to fund international judicial reform and rule-of-law activities involving the federal judiciary.

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### **JUDICIAL OBSERVER PROGRAMS**

Programs currently ongoing in at least two law schools provide foreign students with an opportunity to observe first-hand how the rule of law, judicial independence, and the administration of justice are effectuated in the federal courts. On recommendation of the Committee on International Judicial Relations that the judiciary's participation in such programs be expanded, the Judicial Conference agreed to encourage courts to expose foreign lawyers and/or foreign law students enrolled in United States law schools (in LL.M. programs or otherwise) to the work of the courts in the United States and to the operation of the rule of law in those courts.

## **COMMITTEE ON THE JUDICIAL BRANCH**

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### **THRIFT SAVINGS PLAN**

Presently, the Thrift Savings Plan (TSP) does not allow enrollees to roll-over money from 401(k) and other qualified accounts into TSP accounts, although

September 15, 1999

a federal employee who leaves government service may roll TSP funds into a private sector retirement plan. In the private sector, large employers commonly allow roll-overs of distributions from one eligible retirement plan to another. Legislation pending in the 106<sup>th</sup> Congress (H.R. 208) would amend the TSP to provide this benefit to federal employees. On recommendation of the Committee on the Judicial Branch, the Judicial Conference endorsed the concept of allowing Thrift Savings Plan enrollees to transfer funds from qualified retirement plans of previous employers to TSP accounts.

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## TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Reporting of Non-Case Related Travel. At its March 1999 session, the Judicial Conference directed the Committee on the Judicial Branch to prepare a proposed amendment to the Travel Regulations for United States Justices and Judges that would substantially incorporate, for the purpose of reporting a judge's non-case related travel, the travel reporting requirements for members of the United States Senate (JCUS-MAR 99, p. 20). At this session, the Judicial Conference approved the Committee's proposed regulations, effective October 1, 1999, which are designed to make reporting as easy as possible and yet satisfy congressional requests for information about non-case related travel. They apply to circuit, district, bankruptcy and magistrate judges as well as to judges of the United States Court of International Trade, the United States Court of Federal Claims and territorial district courts.

Alternative Method for Computing Per Diem Travel Reimbursement. To mitigate the adverse effects on judges of reductions in per diem rates in some locations, the Committee recommended, and the Judicial Conference approved, proposed amendments to the Travel Regulations for United States Justices and Judges to allow judges to claim the cost of lodging as well as to take the standard meals and incidental expenses allowance (presently \$46 per day) authorized under the judges' travel regulations. This change is consistent with executive branch practice.

Laundry, Cleaning, and Pressing Expenses and Lodging Taxes. Under the judges' travel regulations, a judge may claim reimbursement for the cost of laundry, cleaning and pressing of clothing while on travel as a subsistence expense (*Guide to Judiciary Policies and Procedures*, Vol. III-A, Ch. V, § E.2.b.(4)). On recommendation of the Committee, and consistent with recent General Services

Administration amendments to the Federal Travel Regulations, the Conference amended the judges' travel regulations to allow judges to claim reimbursement for these expenses, as well as lodging taxes, as reimbursable miscellaneous transportation expenses.

## **COMMITTEE ON JUDICIAL RESOURCES**

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### **PROFESSIONAL LIABILITY INSURANCE**

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Public Law No. 105-277) authorized the judiciary to provide reimbursement for a portion of the cost of professional liability insurance to certain groups within the judiciary, effective October 1, 1998. The maximum reimbursement allowed is one-half the cost of the policy. The legislation is applicable to three groups within the third branch: (1) justices and judges; (2) law enforcement officers (*i.e.*, probation and pretrial services officers); and (3) "supervisors and managers within the Judicial Branch as authorized by the Judicial Conference of the United States." The Committee on Judicial Resources considered implementation of the statute for "supervisors" and "managers" within the judiciary, excluding federal public defender organizations.<sup>6</sup> On recommendation of the Committee, the Judicial Conference agreed that court unit executive positions would be designated as "manager" and/or "supervisor" positions eligible to participate in the program. Further, court unit executives (including chief probation and chief pretrial services officers for non-officer managers and supervisors) will be authorized to determine which positions within their units are managerial or supervisory for purposes of the program, consistent with Judicial Conference guidelines. The Conference approved the following guidelines proposed by the Committee<sup>7</sup>:

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<sup>6</sup> The Committee on Defender Services made recommendations to the Conference regarding application of the statute to federal public defender organization employees. *See supra*, "Professional Liability Insurance," pp. 61-62.

<sup>7</sup> As noted in footnote 4 (p. 61, *supra*), subsequent legislation (Public Law No. 106-58) makes reimbursement to eligible and interested employees mandatory. These guidelines will need to be revised to reflect this new requirement.

*September 15, 1999*

1. A court's participation in the program is discretionary. However, any participating court must have a written plan that is announced to employees before the program is implemented.
2. Participation of a court unit in the program is at the discretion of the court unit executive; however, to the extent possible, co-located courts of appeals, district courts, and bankruptcy courts should endeavor to develop compatible programs. No additional funds will be provided to a court unit's budget for this purpose.
3. The program is limited to "management officials" and "supervisors" within the courts, as those terms are defined in section 7103(a) of title 5, United States Code.
4. Generally, a person occupying an attorney or a law clerk position is not eligible for the program unless the person serves in a supervisory capacity.
5. The program must be administered fairly within an individual court, such that all qualified employees with the same or similar job descriptions must be eligible to participate. Eligibility determinations should be based upon examination of particular positions and their duties rather than the individuals occupying those positions.

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#### **CIRCUIT EXECUTIVE'S OFFICE STAFFING**

In September 1996, the Judicial Conference approved a temporary architect/engineer position in the District of Columbia Circuit Executive's office for a three-year period to assist in a multi-year construction project to build an annex to the existing courthouse (JCUS-SEP 96, p. 63). Because the project is ongoing, the Conference approved, at the request of the court and on recommendation of the Committee, an extension of the position for two years, until the end of fiscal year 2002. The Director of the Administrative Office is authorized to extend the position for an additional two years if suitable justification is provided in the future.

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## COURT INTERPRETER POSITIONS

Based on established criteria, the Judicial Resources Committee recommended and the Conference approved, two additional court interpreter positions for the Southern District of California for fiscal year 2001.

## COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

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### MAGISTRATE JUDGE RECALL REGULATIONS

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference approved technical and substantive amendments to the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges (*ad hoc* recall regulations) and the Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges (extended service recall regulations). The amendments to the *ad hoc* and extended service recall regulations will, *inter alia*:

- a. Clarify that a magistrate judge who retires under the Judicial Retirement System (28 U.S.C. § 377) and who thereafter practices law is permanently ineligible for recall service;
- b. Clarify that a magistrate judge who is recalled should be referred to as "magistrate judge" and has all the powers and duties of an active magistrate judge;
- c. Clarify (as provided in 28 U.S.C. § 636(h)) that a retired magistrate judge may be recalled as a magistrate judge in any judicial district by the judicial council of the circuit within which the district is located; and
- d. Incorporate language from the Travel Regulations for United States Justices and Judges authorizing payment of transportation and actual subsistence expenses for court business conducted inside and outside the corporate limits of the recalled judge's official duty station, which upon retirement becomes the judge's permanent residence.

September 15, 1999

In addition, the amendments to the extended service recall regulations will eliminate language stating that judges on extended service recall are considered employees for purposes of retirement under chapter 83, the Civil Service Retirement System (CSRS), and chapter 84, the Federal Employees' Retirement System (FERS), of title 5, United States Code. Judges recalled on an extended service basis have no additional retirement rights under CSRS or FERS upon recall. *See also supra*, "Bankruptcy Judge Recall Regulations," p. 50.

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## CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, locations, salaries, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

### FIRST CIRCUIT

#### District of New Hampshire

Made no change in the number of positions or the location or arrangements of the existing magistrate judge position in the district.

### FOURTH CIRCUIT

#### Middle District of North Carolina

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

#### District of South Carolina

1. Authorized an additional full-time magistrate judge position at Greenville, Spartanburg, or Anderson; and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

**FIFTH CIRCUIT**

**Western District of Texas**

1. Authorized an additional full-time magistrate judge position at El Paso;
2. Converted the part-time magistrate judge position at Del Rio to full-time status and designated the position as Del Rio or Eagle Pass;
3. Increased the salary of the part-time magistrate judge position at Del Rio from Level 2 (\$52,787 per annum) to Level 1 (\$58,065 per annum) commencing on October 1, 1999, if funds are available; and
4. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

**SIXTH CIRCUIT**

**Eastern District of Kentucky**

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

**Western District of Kentucky**

1. Redesignated the full-time magistrate judge position at Hopkinsville or Bowling Green as Owensboro or Bowling Green;
2. Redesignated the full-time magistrate judge position at Louisville or Owensboro as Louisville; and
3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

**Northern District of Ohio**

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

*September 15, 1999*

## **SEVENTH CIRCUIT**

### **Northern District of Illinois**

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

### **Central District of Illinois**

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

### **Northern District of Indiana**

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

## **EIGHTH CIRCUIT**

### **Eastern District of Arkansas**

1. Authorized an additional full-time magistrate judge position at Little Rock;
2. Discontinued the part-time magistrate judge position at Jonesboro; and
3. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

### **Southern District of Iowa**

1. Converted the part-time magistrate judge position at Davenport to full-time status;
2. Discontinued the part-time magistrate judge position at Council Bluffs upon the retirement of the incumbent in September 1999; and
3. Made no change in the number, location, or arrangements of the other magistrate judge positions in the district.

*Judicial Conference of the United States*

**District of South Dakota**

1. Converted the part-time magistrate judge position at Sioux Falls to full-time status;
2. Increased the salary of the part-time magistrate judge position at Pierre from Level 2 (\$52,787 per annum) to Level 1 (\$58,065 per annum);
3. Increased the salary of the part-time magistrate judge position at Rapid City from Level 2 (\$52,787 per annum) to Level 1 (\$58,065 per annum); and
4. Increased the salary of the part-time magistrate judge position at Aberdeen from Level 7 (\$5,279 per annum) to Level 6 (\$10,557 per annum).

**NINTH CIRCUIT**

**District of Arizona**

1. Converted the part-time magistrate judge position at Yuma to full-time status; and
2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

**Northern District of California**

Increased the salary of the part-time magistrate judge position at Eureka from Level 6 (\$10,557 per annum) to Level 5 (\$21,115 per annum).

**TENTH CIRCUIT**

**District of Colorado**

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

**District of Utah**

Made no change in the salary of the part-time magistrate judge position at Saint George.

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## **ACCELERATED FUNDING**

On recommendation of the Committee, the Judicial Conference agreed to designate the new magistrate judge positions at Greenville, Spartanburg, or Anderson, South Carolina; El Paso and Del Rio, Texas; Little Rock, Arkansas; Davenport, Iowa; Sioux Falls, South Dakota; and Yuma, Arizona, for accelerated funding in fiscal year 2000.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **COMMITTEE ACTIVITIES**

The Committee reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **FEDERAL RULES OF CIVIL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 4 (Summons), 5 (Serving and Filing Pleadings and Other Papers), 12 (Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings), 14 (Third-Party Practice), 26(d) (Timing and Sequence of Discovery), 26(f) (Conference of Parties; Planning for Discovery), and 37 (Failure to Make Disclosure or Cooperate in Discovery: Sanctions), along with amendments to the Supplemental Admiralty Rules B (In Personam Actions: Attachment and Garnishment), C (In Rem Actions: Special Provisions), and E (Actions in Rem and Quasi in Rem: General Provisions). The Judicial Conference approved these amendments and the accompanying Committee Notes for transmittal to the Supreme Court.

Other amendments to the Civil Rules proposed by the Rules Committee were debated at the Conference session. The Judicial Conference approved revisions to Rule 26(a) (Required Disclosures; Methods to Discover Additional Matter), which would eliminate the local "opt-out" and would narrow mandatory disclosure requirements; 26(b)(1) (Discovery Scope and Limits: In General), which would narrow the scope of discovery to matters relevant to "claims or defenses"; and 30 (Depositions upon Oral Examination), which deals with the length of depositions. These amendments, as well as those mentioned above, will be transmitted, accompanied by the Committee Notes explaining their purpose and intent, to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

After discussion, the Judicial Conference declined to approve proposed amendments to Rules 26(b)(2) (Discovery Scope and Limits: Limitations)<sup>8</sup> and 34 (Production of Documents and Things and Entry upon Land for Inspection and Other Purposes).

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## **FEDERAL RULES OF EVIDENCE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Evidence Rules 103 (Rulings on Evidence), 404 (Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes), 701 (Opinion Testimony by Lay Witnesses), 702 (Testimony by Experts), 703 (Bases of Opinion Testimony by Experts), 803(6) (Hearsay Exceptions; Availability of Declarant Immaterial), and 902 (Self-authentication), together with Committee notes explaining their purpose and intent. These amendments were approved by the Conference without debate, except those pertaining to Rule 702 (proposed in response to the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)), which were approved after discussion. The Conference authorized the transmittal of these

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<sup>8</sup> The proposed amendment to Rule 26(b)(2) that was on the floor of the Conference concerned cost shifting. The Rules Committee also proposed an amendment to the same rule dealing with presumptive national limits on depositions and interrogatories. This latter amendment was approved by the Conference for transmission to the Supreme Court through a mail ballot concluded on December 3, 1999.

September 15, 1999

rules, with the accompanying Committee Notes, to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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## **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1017 (Dismissal or Conversion of Case; Suspension), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 4003 (Exemptions), 4004 (Grant or Denial of Discharge), and 5003 (Records Kept by the Clerk). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

## **COMMITTEE ON SECURITY AND FACILITIES**

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### **NAMING FEDERAL COURTHOUSES**

Enactment of legislation naming a federal courthouse for a federal judge who has retired from the bench is a way of paying tribute to the judge's years of service dedicated to the administration of justice. However, this action may cause concern if the retired judge is a practicing attorney who might appear in the very courthouse bearing his or her name. In order to avoid the potential for perceptions of bias or conflict of interest, the Judicial Conference approved a recommendation of the Committee on Security and Facilities that it oppose naming a courthouse or other federal building after a retired federal judge who currently practices law.

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### **AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM**

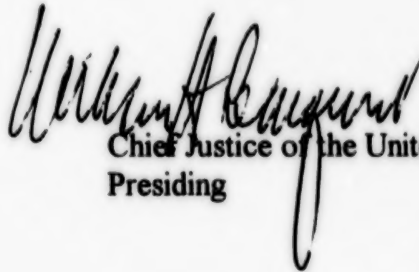
Automated external defibrillators (AEDs) are portable devices that can deliver a life-saving electric shock to a victim of cardiac arrest and dramatically improve the victim's chance of survival. On recommendation of the Committee on Security and Facilities, the Judicial Conference endorsed the provision of AED

*Judicial Conference of the United States*

services for judicial officers and judiciary employees and agreed that the judiciary will assist the United States Marshals Service in establishing a program to provide these services at all court facilities, subject to the availability of funds.

## **FUNDING**

All of the foregoing recommendations that require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds and to whatever priorities the Conference might establish for the use of available resources.



Chief Justice of the United States  
Presiding

## INDEX

### **Administrative Office, Committee on the, 49**

### **Administrative Office of the U. S. Courts**

- architect/engineer position for District of Columbia, 67
- Article III judgeship requests, release of background summaries, 48
- background investigations, probation and pretrial services offices, 60
- budget request, FY 2001, 51
- case files, storage costs, 47
- child care centers in judicial facilities, 47
- Civil Justice Reform Act reporting requirements, 57
- digital audio recording technology guidelines, 57
- Federal Employees' Group Life Insurance, 49
- financial management improvement, 49
- financial plans, FY 2000, 47
- flexible benefits plans, 49
- long-term care insurance, 49
- oleoresin capsicum (OC) pepper spray, 61
- records retention and disposition schedules, 56

### **Admiralty rules (see rules of practice and procedure)**

### **Alternative dispute resolution (ADR)**

- compensation of neutrals, 53-54

### **Alternative Dispute Resolution Act of 1998, 53**

### **Appropriations**

- appropriations act, FY 1999, 61, 66
- budget decentralization guidelines, 51-52
- budget request, FY 2001, 51
- Court Security account, 47
- defender organization funding, 62
- Defender Services account, 47
- Fees of Jurors and Commissioners account, 47
- financial plans, interim, FY 2000, 47
- Salaries and Expenses account, 47

**Automated external defibrillator (AED) program, 75-76**

**Automation** (*see* information technology)

**Automation and Technology, Committee on, 49-50**

**Bankruptcy judges** (*see* judges, bankruptcy)

**Bankruptcy rules** (*see* rules of practice and procedure)

**Bankruptcy system** (*see also* judges, bankruptcy)

appellate structure, 44-45

bankruptcy appellate panels, 45

chapter 7 and 13 debtors' tax returns, 49

chapter 7 and 13 filing fees, 47

digital audio court recording, 56-57

places of holding court/official duty stations, 51

recall regulations, 50

second law clerks, certain bankruptcy courts, 48

**Bankruptcy System, Committee on the Administration of the, 44, 49, 50-51**

**Benefits**

Federal Claims Court judges, 46

Federal Employees' Group Life Insurance, 46, 49

Federal Employees Health Benefits Program, 46

flexible benefits, 49

long-term care insurance, 49

professional liability insurance, 61-62, 66-67

transfer of retirement funds, 64-65

**Budget** (*see* appropriations)

**Budget, Committee on the, 48, 51-52**

**Budget decentralization guidelines, 51-52**

**Cameras in the courtroom, 48**

**Cap-Stun** (*see* oleoresin capsicum pepper spray)

**Child care centers in judicial facilities**, 47

**Circuit councils** (*see* circuit judicial councils)

**Circuit executive's office staffing**, 67

**Circuit judges** (*see* judges, circuit)

**Circuit judicial councils**

budget decentralization guidelines, 51-52

certification of substantial service of retired bankruptcy judges, 50

local rules on filing motions, 58

recall of magistrate judges, 68

reprogramming funds, 51-52

**Civil Justice Reform Act of 1990 (CJRA)**

motions, pending date, 57-58

social security appeals, pending date, 58

statistical reporting, 57-58

**Civil rules** (*see* rules of practice and procedure)

**Civil Service Retirement System (CSRS)**, 69

**Class actions, federalization of**, 45, 62

**Codes of Conduct, Committee on**, 52

**Code of Conduct for United States Judges**, 52

**Compensation**

alternative dispute resolution arbitrators or neutrals, 53

panel attorneys in complicated case, 48

**Conduct and Disability Orders, Committee to Review**

**Circuit Council**, 73

**Congress** (*see also* legislation, pending)

- bankruptcy appellate structure, 44
- class actions, federalization, 45, 62
- Court of Federal Claims, 46
- judges' travel, reporting requirements, 65
- members' travel, Senate, 65
- naming federal courthouses, 75
- professional liability insurance, 61
- rules of practice and procedure, 73-75

**Court administration**

- cameras in the courtroom, 48
- Civil Justice Reform Act reporting requirements, 57-58
- court reporting, digital audio recording, 56-57
- courtroom technologies, 49-50
- judicial conferences, Court of Federal Claims, 46
- official duty stations, 46, 51
- places of holding court, 47, 51
- records management, 47, 54-56
- storage of case files, costs, 47

**Court Administration and Case Management, Committee on**, 44, 47, 49, 53-58

**Court interpreter positions**, 68

**Court of Federal Claims**, 46, 65-66

**Court of International Trade**, 65

**Court reporting**

- digital audio recording, 56-57

**Courthouses** (*see* space and facilities)

**Courts of appeals**

- bankruptcy appeals, 44-45
- cameras in the courtroom, 48

September 15, 1999

**Criminal Justice Act (CJA)** (*see also* defender services)

panel attorney payment in highly complicated case, 48

panel attorney reimbursement/indemnification for malpractice, 48

**Criminal Law, Committee on**, 58-61

***Daubert v. Merrell Dow Pharmaceuticals, Inc.***, 74

**Defender services** (*see also* Criminal Justice Act; federal public defender organizations)

compensation of panel attorneys in complicated case, 48

defender organizations' funding requests, 62

panel attorneys, malpractice indemnification, 48

professional liability insurance, 61-62, 66

training group funding request, 62

**Defender Services, Committee on**, 48, 61-62, 66

**Defibrillator program, automated external**, 75-76

**Democracy Center** (*see* United States Agency for International Development)

**Deoxyribonucleic acid (DNA)**, 58

**Department of Justice**, 63

Federal Bureau of Investigation (FBI), 58

Federal Bureau of Prisons (BOP), 58, 59

United States Marshals Service, 63, 76

United States trustees program, 47, 49

**Digital audio court recording**, 56-57

**Discovery, rules on**, 73-74

**District courts** (*see also* bankruptcy system; magistrate judges system; probation and pretrial services system)

alternative dispute resolution, compensation of neutrals, 53

bankruptcy appellate structure, 44-45

cameras in the courtroom, 48

court reporting, 56-57

digital audio court recording, 56-57

*Judicial Conference of the United States*

**District judges** (*see* judges, district)

**Economy Subcommittee of the Budget Committee**  
jurisdictional statement, 48

**Ethics in Government Act of 1978**, 63

**Evidence rules** (*see* rules of practice and procedure)

**Executive branch** (*see also* Department of Justice; Federal Bureau of Prisons; Federal Bureau of Investigation, General Services Administration, Office of Personnel Management)  
per diem travel reimbursement, 65

**Executive Committee**, 42-49, 62

**Federal Bureau of Investigation (FBI)**, 58

**Federal Bureau of Prisons**, 58, 59

**Federal courts improvement legislation**, 46, 48

**Federal Employees' Group Life Insurance**, 46, 49

**Federal Employees Health Benefits Program**, 46

**Federal Employees' Retirement System**, 69

**Federal Judicial Center**  
bankruptcy appellate structure study, 44  
Foundation, 64

**Federal public defender organizations** (*see* defender services)

**Federal Records Centers**, 54-56

**Federal rules** (*see* rules of practice and procedure)

**Federal Travel Regulations, 66**

**Federalization**

- class actions, 45, 62
- crimes committed with firearms, 59

**Federal-State Jurisdiction, Committee on, 45, 62**

**Fees**

- bankruptcy, increase in chapter 7 and 13 filing fees, 47

**Financial Disclosure, Committee on, 48, 63**

**Financial disclosure reports**

- redaction of harmful information, 48, 63
- release, 48, 63

**Financial plans (see appropriations)**

**Firearms**

- federalization of crimes committed with firearms, 59

**Foreign law students and lawyers, observer programs, 64**

**General Services Administration, 65-66**

**Gibbons, Julia Smith, 42**

***Guide to Judiciary Policies and Procedures***

- alternative dispute resolution, compensation of neutrals, 53-54
- Civil Justice Reform Act report on civil motions pending over six months, 57
- records management, 54-55
- Travel Regulations for Justices and Judges, 65-66

**Guidelines**

- budget decentralization, 51-52
- digital audio recording, 56-57
- professional liability insurance, 61-62, 66-67
- storage and retention of sealed court records, 54-55

**Hall, Cynthia H., 42**

**Hodges, Wm. Terrell, 43-44**

**Identity Theft and Assumption Deterrence Act of 1998, 48, 63**

**Information technology, 49-50, 56-57**

**Intercircuit assignments**

Article III judges, 63

bankruptcy judge on recall service, 50

**Intercircuit Assignments, Committee on, 63**

**International Judicial Relations, Committee on, 64**

**Judges, Article III** (*see also* judges, district; judgeships, Article III)

Federal Employees' Group Life Insurance, 49

intercircuit assignments, 63

recusal obligations, 52

travel, 65-66

travel regulations, 65-66

**Judges, bankruptcy** (*see also* judgeships, bankruptcy)

Federal Employees' Group Life Insurance, 46

Federal Employees Health Benefits Program, 46

intercircuit assignment of recalled, 50

recall regulations, 50

recusal obligations, 52

travel, 65-66

travel regulations, 65-66

**Judges, circuit** (*see* judges, Article III)

**Judges, Court of Federal Claims**

annuity, 46

benefits, 46

Federal Employees' Group Life Insurance, 46

Federal Employees Health Benefits Program, 46

**Judges, Court of Federal Claims (continued)**

- official duty stations, 46
- recall of judges retired on disability, 46
- recusal obligations, 52
- service on territorial courts, 46
- travel, 65-66
- travel regulations, 65-66

**Judges, district (*see also* judges, Article III)**

- CJRA report on pending motions, 57-58

**Judges, magistrate**

- accelerated funding, 73
- changes in positions, 69-72
- CJRA report on pending motions, 57-58
- Federal Employees' Group Life Insurance, 46
- Federal Employees Health Benefits Program, 46
- recall regulations, 68-69
- recusal obligations, 52
- travel, 65-66, 68
- travel regulations, 65-66, 68

**Judges, territorial**

- Federal Employees' Group Life Insurance, 46
- Federal Employees Health Benefits Program, 46
- recusal obligations, 52
- travel, 65-66
- travel regulations, 65-66

**Judgeships, Article III**

- requests, release of background summaries, 48

**Judicial branch, 66**

**Judicial Branch, Committee on the, 64-66**

*Judicial Conference of the United States*

**Judicial Conference of the United States**

- delegation of authority to Financial Disclosure Committee, 48
- Foundation, 47
- funding of actions, 76
- judgeship requests, release of background summaries, 48

**Judicial Resources, Committee on, 48, 61, 66-68**

**Judicial Retirement System, 50, 68**

**Kazen, George P., 42**

**Law clerks**

- bankruptcy courts with pending judgeship requests, 48

**Leahy, Patrick, 45**

**Legislation, pending (106<sup>th</sup> Congress)**

- class actions (S. 353 and H.R. 1875), 45, 62
- Court of Federal Claims legislation, 46
- Criminal Use of Firearms by Felons (CUFF) Act (S. 254), 59
- federal courts improvement bill, 46, 48
- Federal Judiciary Protection Act of 1999 (S. 113), 48
- filing tax returns in bankruptcy cases (S. 625), 49
- operation of child care centers in judicial facilities (S. 599), 47
- transfer of retirement funds (H.R. 208), 64-65
- Violent Offender DNA Identification Act of 1999 (S. 903), 58

**Legislative branch (see Congress)**

**Magistrate judges (see judges, magistrate)**

**Magistrate judges system (see also judges, magistrate)**

- accelerated funding for new positions, 73
- changes in positions, 69-72
- recall regulations, 68-69

**Magistrate Judges System, Committee on the Administration of the, 58, 68-73**

September 15, 1999

**National Archives and Records Administration (NARA), 47, 54-56**

**National Bankruptcy Review Commission, 44**

**Office of Personnel Management, 49**

**Official duty stations, 46, 51, 68**

**Oleoresin capsicum pepper spray (OC), 60-61**

**Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, 61, 66**

**Panel attorneys (see Criminal Justice Act; defender services)**

**Personnel, court**

automated external defibrillator program, 75-76

background investigations, probation and pretrial services offices, 60

professional liability insurance, 61-62, 66-67

**Places of holding court, 47, 51**

**Post-sentence reports (see Supplemental Informational Report to the Federal Bureau of Prisons)**

**Pretrial services system (see probation and pretrial services system)**

**Probation and pretrial services officers (see also probation and pretrial services system)**

background investigations, 60

professional liability insurance, 66-67

**Probation and pretrial services system**

background investigations for officers and assistants, 60

DNA collection and analysis, 58

oleoresin capsicum pepper spray, 60-61

post-sentence reports, 59-60

professional liability insurance, 66-67

Supplemental Informational Report to the Federal Bureau of Prisons, 59

work measurement study, 60

**Professional liability insurance, 61-62, 66-67**

**Recall regulations**

- bankruptcy judges, 50
- magistrate judges, 68-69

**Records management**

- records designated "Disposal Not Authorized," 56
- sealed court records, 54-55
- storage costs, 47

**Recusal obligations of judges, 52**

**Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges, 68**

**Regulations of the Judicial Conference of the United States Governing the Ad Hoc Recall of Retired Bankruptcy Judges, 50**

**Regulations of the Judicial Conference of the United States Governing the Extended Recall Service of Retired Bankruptcy Judges, 50**

**Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges, 68**

**Resolutions**

- Gibbons, Julia Smith, 42
- Hall, Cynthia H., 42
- Hodges, Wm. Terrell, 43-44
- Kazen, George P., 42
- Smith, Fern M., 43
- Stahl, Norman H., 43
- Thompson, David R., 42

**Retirement**

- bankruptcy judges, 50
- Civil Service Retirement System (CSRS), 69
- Court of Federal Claims judges, 46
- Federal Employees' Retirement System (FERS), 69

September 15, 1999

**Retirement (continued)**

- funds, transfer to Thrift Savings Plan accounts, 64-65
- Judicial Retirement System, 50, 68
- magistrate judges, 68-69

**Rule of law programs, 64**

**Rules of practice and procedure**

- admiralty rules, 73
- bankruptcy rules, 75
- civil rules, 58, 73-74
- class action legislation, 45
- evidence rules, 74-75

**Rules of Practice and Procedure, Committee on, 45, 73-75**

**Sealed records (*see also* records management), 54-55**

**Security**

- assaults/threats to federal judges and others, 48
- background investigations, probation and pretrial services offices, 60
- Federal Judiciary Protection Act of 1999, 48
- release of financial disclosure reports, 48, 63

**Security and Facilities, Committee on, 47, 48, 63, 75-76**

**Smith, Fern M., 43**

**Social security appeals, 58**

**Space and facilities**

- automated external defibrillator program, 75-76
- child care centers in judicial facilities, 47
- naming federal courthouses, 75

**Staffing resources**

- architect/engineer position for District of Columbia, 67
- court interpreter positions, additional, 68
- law clerks, bankruptcy, 48
- probation and pretrial services, work measurement study, 60

**Stahl, Norman H., 43**

**Supplemental Informational Report to the Federal Bureau of Prisons, 59-60**

**Supporting personnel** (*see* personnel, court)

**Technology** (*see* information technology)

**Temporary emergency funds (TEF), 51-52**

**Tenant alteration funds, 51-52**

**Thompson, David R., 42**

**Thrift Savings Plan (TSP), 64-65**

**Travel, judges'**

- computing travel reimbursement, 65
- recalled magistrate judges, 68
- reimbursable miscellaneous transportation expenses, 65-66
- reporting non-case related travel, 65

**Travel Regulations for United States Justices and Judges, 65-66, 68**

**United States Agency for International Development (USAID)**

- Center for Democracy and Governance (Democracy Center), 64

**United States Marshals Service, 63, 76**

**United States trustees program, 47, 49**

**END**

**03-29-02**

